Challenge and change – an update for the accounting profession

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CHECK AGAINST DELIVERY

Good afternoon, and thank you to the Institute of Public Accountants (IPA) for the opportunity to present to you today. In my presentation I want to talk about a number of regulatory changes and challenges that hopefully will be of some interest. This includes:

- what ASIC is doing to help small business
- an update on ASIC's role in self-managed superannuation fund (SMSF) matters – for example, SMSF auditor registration and the looming changes for any practitioner who provides advice about self-managed super, and
- how we work with other regulators using our work with the Australian Taxation Office (ATO) on SMSF auditor registration and with the Tax Practitioners Board (TPB) as a couple of examples.

I'll also mention briefly some current and proposed reforms for any practitioners who work in the insolvency area.

ASIC's regulatory role and objectives

Before I delve into this detail, let me briefly outline ASIC's regulatory role and objectives.

Our goal is ensuring that the financial services and markets we regulate operate to fund the real economy and drive economic growth. In doing that, we can contribute to improved standards of living for all Australians.

But we can only achieve this if investors, consumers and those needing capital to build their businesses have trust and confidence in our financial services and markets. Sensible regulation can play a key role in helping to build this trust.

ASIC and small business – cutting red tape

Given the critical role of IPA members in helping small business navigate the challenges of the business world, I wanted to update you on important initiatives that ASIC and others are taking that I hope you will pass on to your clients. But first, let me provide some context.

There are around 4.1 million companies and business names registered with ASIC. Approximately 96% fit the Australian Bureau of Statistics (ABS) definition of a small business (i.e. that have less than 20 employees).

ABS data tells us that these small businesses make a significant contribution to the Australian economy, both in terms of the number of people they employ (half the Australian workforce) and their output (accounting for around 1/3 of GDP).

This is why small business is a focus for ASIC. Now let me outline some of the work relevant to small business that ASIC is involved in. This includes work around cutting red tape, the work of our small business team and resources that we make available for small business.

ASIC has interaction with small business on a daily basis, most notably through our Registry function. Over the past five years, Registry has undertaken a number of enhancement projects that assist small business, including:

- taking over the registration of business names – giving people the ability to register a business name online, and
- the national Business Names Register which delivers a single national registration with free online searches whereby people only need to register a business name once to have national effect.

In the 2014–15 financial year almost 300,000 new business names were registered with ASIC. All except 36 new business name applications were lodged and registered online. This demonstrates how we are reducing red tape and making the administration process easier. Another interesting statistic is that 30% of new business name registrations occurred after hours demonstrating the importance small businesses place on being able to access information and services at a time that is convenient to them.

We estimate that ASIC's Business Names Register will save business over $215 million in reduced fees to register or renew business names during its first five years of operation from May 2012 to June 2017.

We are also working closely with government to make it easier to start a business. The Streamlining Business Registration Measure was tabled in the 2015–16 Federal Budget and made a provision of $32.4 million over five years from 2014–15 for the ATO, ASIC and the Department of Industry and Science, to:

- create a single online portal for business and company registration
- publish application programming interfaces for Australian Business Numbers, business names and company registrations that allow information to be exchanged

between different systems in a seamless manner, and enable software developers to build registration software, and

- reduce the number of business identifiers by making the Australian Business Number (ABN) the primary identifier for businesses and companies.

Under the Streamlined Business Registration model, to be implemented by mid-2016, it is expected that an individual planning to start a business will be able to log onto business.gov.au and access the Australian Business Licence and Information Service (ABLIS) to identify the government licences, permits, approvals and registrations required for:

- ABN registration
- company registration
- business name registration
- Goods and Services Tax (GST) registration
- Pay as you go (PAYG) withholding registration
- Fringe Benefits Tax (FBT) registration
- an Australian Business Account to provide an integrated business account with government, and
- online payment for registration.

With the wide-ranging use of social media channels throughout the business environment, ASIC has also introduced a number of initiatives to help small businesses connect with us. We have a range of social media channels where small businesses can interact directly with ASIC staff. These include Facebook, Twitter and YouTube. These channels provide ASIC with a means of getting tailored messages out to small businesses, whilst ensuring small business has the ability to engage directly with ASIC.

A key priority for ASIC is providing efficient and accessible registration and ‘web chat’ is one way we can support this priority by making it simpler for customers to do business with us and ultimately improve customer satisfaction. For this reason, ASIC is aiming to introduce web chat within the 2016 calendar year.

We are also making our Registry data available and accessible to our customers. The information contained within ASIC registers is a valuable resource for our customers. We are facilitating new ways to access our data, and our inclusions on the Federal Government’s data.gov.au website means the public can now download lists of our most searched registers for free.

To illustrate this, in the 2014–15 financial year:

- 86.2 million searches of ASIC registers were requested, which was an increase of 10 million from the previous year, and
- almost 100% of searches were requested online with most provided free of charge.

Let me turn now to what our Small Business Team does.

Small Business team

Engaging with small businesses is often difficult for regulators like ASIC because of the sheer size, breadth and variation of the sector.

ASIC's Small Business team uses a number of different strategies to enhance our interaction and understanding of the small business sector, whilst at the same time, ensuring small businesses have ASIC services that are tailored specifically to their needs.

These strategies include:

- Engaging with stakeholders. This involves working closely with other regulatory and government agencies so that we can communicate our messages using a variety of channels. This also allows us (where possible) to minimise process duplication and to reduce regulatory burden or red tape on small business. We also engage with key advisers, such as you, who play a very important role in helping small businesses understand the obligations placed on them.
- Regulating small businesses that fail or refuse to comply with their legal requirements using a combination of compliance and enforcement activities. Our commitment is to try and facilitate a compliance outcome rather than taking punitive enforcement action, but enforcement action may be necessary where there is persistent non-compliance. Part of our work in this area is focused on directors that engage in illegal phoenix activity, and I'd be more than happy to take any questions on our work in this area later.
- Our final strategy is around what useful resources we can provide to small business.

Just on this point, resources that we have developed for small business include:

- A booklet called 'Your obligations as a small business operator'. This booklet provides easy to understand information that simply sets out the main obligations for directors of small Pty Ltd companies.
- A dedicated small business hub on the ASIC website. The small business hub provides easy to access and understandable information for people wanting to know how ASIC regulates small businesses. This includes how to start a small business, the different laws that need to be followed by small businesses and, importantly, how to close a small business down.
- ASIC Business Check App. We have developed a smartphone App to help protect small businesses when engaging in commerce. The App has been developed to encourage business owners to start their due diligence early, before they enter into a business relationship with another party, rather than waiting until something has gone wrong and finding out that they are now chasing money from a business that doesn't exist.
- As part of the whole-of-government ATO-led 'Fix It Squad initiative', we have added a link on the Small Business Hub called 'ASIC guide for small business directors'. This guide is targeted at people who transition from operating as a sole trader to starting a Pty Ltd company.

ASIC and SMSF regulation

Let me turn to my second major topic for today around the regulation of SMSFs. There are a few things to discuss here, including SMSF auditor registration, the changing rules about providing advice on SMSFs and a couple of areas of ASIC focus going forward.

As you will know, ASIC has been registering approved SMSF auditors since January 2013. The introduction of this registration regime recognised the critical role that registration plays to raise the standard of SMSF auditor competency, and ensure there is a set of minimum standards that apply across the entire sector.

Nearly 6,700 SMSF auditors are currently registered with us. ATO information also shows that around 6,300 are active in auditing funds. This is significantly less than the 11,500 professionals that were auditing SMSFs prior to the registration requirement.

In short, SMSF auditing has become a more specialised activity requiring a greater commitment to meeting minimum standards.

Prior to registration an auditor must now first pass a competency exam conducted by ASIC. The ATO, the IPA, other accounting bodies and others have also assisted ASIC with the development and maintenance of our competency exam and competency standards.

SMSF audit experience

One matter worth raising is in relation to the SMSF audit experience claimed by applicants and the information we receive to support it.

To be eligible for registration, applicants need to have at least 300 hours of experience in auditing SMSFs over the last three years, all under the supervision of an approved SMSF auditor. Applicants are asked to provide statements and information from their supervisors to support this.

In terms of ongoing applications we received about 10 to 20 a month. While the process is generally smooth there are some specific issues we have encountered, including:

- overstatement of hours worked
- non-audit work being claimed as audit work experience, usually based on a misunderstanding of the nature of SMSF audit work compared to other SMSF related accounting or administrative work
- claims about applicants working on audits not actually audited by their supervisors
- supervisors not preparing their own statements or signing them without adequately reviewing the details, and
- a general lack of support for and inconsistencies in statements and information provided.

Where applicants provide false information or otherwise seek to mislead ASIC, this may result in us refusing their application, and for supervisors it can lead to us disqualifying them from being SMSF auditors. We have a broad range of information available to us, including information from the ATO, and we do check. We have in some cases even gone back to audit files to evidence involvement.

Registered SMSF auditors can certainly help in this regard by considering their record keeping for staff gaining SMSF audit experience under their supervision.

Several applications have been refused based on inadequate, false or misleading information to support SMSF audit experience. In some cases the applicant had the experience required but was refused because the applicant deliberately gave false or misleading information. This illustrates the case for playing it straight with us. We have broad discretion in relation to the experience requirement and can consider equivalent experience. Seeking to mislead us can be unnecessary and is high risk.

Licensing exemption for certain accountants expiring

Let me move now to advice about SMSFs. As you would all know, the current licensing exemption for certain accountants giving advice to establish or windup an SMSF will be removed from 1 July 2016 and is being replaced with a limited licence. Accountants who were able to rely on the exemption have access to transitional arrangements if they apply by 30 June 2016. For those wishing to apply for a limited licence, I would like to emphasise that the 30 June 2016 deadline will approach quickly. This is especially so if further training is required. Depending on your background and existing training, further training can take up to six months to complete.

ASIC issued a media release[1] last year (25 August 2015) on limited licence applications. In the media release, we encouraged accountants intending to apply for a limited licence to do so by 1 March 2016. This of course is not mandatory, but applying after this date means you run a significant risk that the application will not be assessed before 30 June 2016. Those who delay lodging their application until soon before 30 June 2016 may very well find themselves unable to provide advice on SMSFs for a period of time until we finalise the assessment of the application.

We want to reassure you though that the application process is not complex or rocket science. Applicants should be able to apply without the need to involve legal advisers. We have spent quite a lot of time tailoring our online AFS licence application form to make applying for a limited licence easier. There is also detailed information on ASIC’s website, which will assist you in your application.

While the exemption will be repealed from 1 July 2016, a range of other current exemptions will continue after this time. There will be various types of financial services accountants can continue to provide without holding an AFS licence, for example:

- establishing, structuring or valuing an SMSF (without recommending the establishment or winding up of an SMSF)
- broad asset allocation advice

[1] Media Release (15-227MR) *Applying for a limited AFS licence – the time to act is now* (25 August 2015).

- tax advice on financial products such as an interest in an SMSF and underlying investments held by the SMSF, and
- advice on how to operate an SMSF, including the process of winding up or exiting an SMSF.

An accountant can also become authorised under another person's AFS licence, or alternatively, could refer clients to an AFS licensee or representative for financial product advice.

It's important to remember, though, that some of these exemptions also require certain disclosures to be made to clients when relying on the exemption (i.e. the person is not an AFS licence holder and that the client should consider seeking advice from an AFS licensee).

SMSFs – misleading and deceptive advertising

Just to round off the discussion about SMSFs, let me share with you some areas of ASIC's focus going forward.

SMSFs are a key focus of ASIC's work on misleading and deceptive advertising. We want to ensure that only those investors for whom an SMSF is suitable are advised to establish an SMSF, and that consumers receive clear and accurate information.

The themes we have seen in recent matters of misleading and deceptive advertising on SMSFs include:

- providers claiming that SMSFs can be established 'free' of charge
- the risks, benefits and costs of SMSFs compared with funds regulated by the Australian Prudential Regulation Authority (APRA)
- the performance of SMSFs compared with APRA-regulated funds, and
- the performance of certain investments within SMSFs (e.g. property).

Just on this point about people spruiking property investments through SMSFs, I want to highlight an important case for ASIC recently which was the matter of Park Trent Properties Group Pty Ltd, a property investment promoter. In November 2015 we obtained final orders declaring that Park Trent was carrying on an unlicensed financial services business. Park Trent's business promotes the use of SMSFs to purchase investment property. By the time of the trial in June 2015, Park Trent had advised over 860 members of the public to establish and switch funds into an SMSF. Park Trent must now refrain from providing unlicensed advice and post a notice on its website outlining the order made against it.

This judgment was important for ASIC because it confirmed our view of the law that those who promote and make recommendations to investors about establishing an SMSF (or using an existing one) and recommend, facilitate or arrange for the investors to acquire or dispose of superannuation assets to invest in property, are carrying on a financial services business for which they must have an AFS licence.

ASIC – working with other regulators

My last major topic for today is about how ASIC works with other regulators. In speaking about small business earlier I discussed how ASIC has an aim to try and cut red tape. One way we can do that is, to the extent possible, working with other regulators to minimise duplication and overlap.

I want to give two examples of this today. First, how we work with the ATO in the SMSF auditor area, and second how we work with the TPB in regulating financial advisers who might be providing tax advice.

On SMSF auditors, ASIC was made responsible for determining eligibility requirements, setting competency standards and taking enforcement action where appropriate. The ATO on the other hand has continued to police SMSF auditor compliance in partnership with ASIC. We have built a very strong working relationship with the ATO and look forward to this continuing.

We work very closely with the ATO on a daily basis and some of the results of this dual regulatory approach have included:

- 15 SMSF auditors being referred by the ATO to ASIC for further action
- the ongoing exchange of valuable information, including information that has assisted directly with countless registration assessments—identifying, confirming or allaying concerns with applicants, and
- our joint engagement with professional bodies and standard setters.

We have adopted a similar collaborative approach in working with the TPB. From 1 July 2014, subject to some exceptions, AFS licensees and their representatives who provide tax advice are required to register with the TPB.

These amendments mean that financial advisers who provide tax advice are regulated by the TPB, whilst still being regulated by ASIC under the *Corporations Act 2001* (Corporations Act). This means of course that ASIC and the TPB have to work cooperatively in areas of regulatory overlap.

The overlap in regulatory functions is primarily in relation to education requirements. To be registered with the TPB, an adviser must meet experience and education requirements that are set out in their legislation. To provide financial advice, an adviser must be adequately trained and competent and meet the requirements of ASIC's policy in Regulatory Guide 146 *Licensing: training of financial product advisers* (RG 146).

ASIC has been working with the TPB to help minimise regulatory duplication and to ensure consistency where possible. This has involved among other things:

- monthly meetings and internal consultation as needed between ASIC and the TPB in the areas of media/communications, policy, and operational/registry services, and
- ASIC attendance at all TPB stakeholder consultation sessions.

On 21 July 2014, ASIC and the TPB signed a Memorandum of Understanding that permits information sharing and sets out a framework for interaction between the two agencies. ASIC has also facilitated a streamlined registration process for financial advisers who need to register with the TPB by pre-filling the TPB registration form with information from ASIC databases.

Recently, advisers have requested guidance from ASIC with concerns that an individual who is not registered with the TPB will not meet various tests in the Corporations Act that establish whether or not advice is in the best interests of a client. Of course, not all individuals giving tax advice are required to register with the TPB. Only a number of individuals in a firm sufficient to supervise the remaining individuals are required to be registered.

We believe that advisers who are not personally registered, but are adequately supervised under the TPB's laws, can comply with the expertise requirements in the Corporations Act to meet the best interests of their client. We hope to release the updated guidance about this in the first half of this year.

The future – change and challenges

Clearly it's a busy time in our markets at the moment.

In ASIC's Corporate Plan released last year we highlighted long term trends which are just as relevant to you as to us. These include:

- getting the balance between regulation and free markets right
- digital disruption to business models and the growing use of technology in all aspects of business
- structural change in our markets e.g. as people age and start to retire in greater numbers
- complexity in financial services, products and markets, and
- the impact of globalisation.

I was recently asked whether, in light of all this, I thought there was still a role for an accountant to be the sole source or primary source of advice for their clients.

For what it's worth, I think there is still room for that role in the same way you have generalist lawyers or even doctors.

But with all these challenges it is a more complex world for everybody and so, I think, every individual business needs to carefully consider what sort of work they want to do, the risks they might face in carrying out that work and whether it's worth their while.

Before finishing up to take questions, I would like to highlight future changes that have been mooted in the insolvency area.

As you would probably be aware, Parliament recently passed significant legislation to reform the insolvency regime in Australia. The effective date of this new legislation is March 2017, although there may be further transitional provisions that alter when particular parts of the new laws will start. Much of the detail of the reform is still to be set out in rules yet to be released. But it is clear that personal insolvency and corporate insolvency laws will become a lot more alike. ASIC will be given further powers to help oversight of the insolvency profession, and the changes will empower creditors to give them greater access to information about the conduct of corporate insolvencies.

In addition to this, the Government has also announced proposals to encourage more people to 'have a go' in business. They will do this by:

- introducing a safe harbour for directors involved in corporate insolvencies if they appoint a turnaround adviser to help the company through difficult periods, and
- making 'ipso facto' clauses allowing contracts to be terminated solely due to an insolvency event unenforceable if a company is restructuring.

All of this probably highlights the 'change' part of my speech today. So that just leaves me the challenge of answering any questions that you may have.

Thank you for your attention today. I'd be happy to answer any questions.